IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3356 of 2005
Date of Decision: 26.7.2007

Desh Bandhu Bhalla ...Appellant

Versus

Darshana Rani ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Vikas Behl, Advocate, for the appellant.
Shri C.B. Goel, Advocate, for the respondent.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for specific performance of the agreement dated 23.4.1991, was decreed.

The plaintiff entered into an agreement of sale dated 23.4.1991 with the appellant for a total sale consideration of Rs.21,000/-. A sum of Rs.7000/- was paid as earnest money and the balance was to be paid at the time of execution of the sale deed which was contemplated on or before 10.6.1991. It is the case of the plaintiff that on 10.6.1991, she remained present in the office of Sub Registrar, Nawanshahr with the balance sale consideration and other expenses, but the defendant did not reach the office of Sub Registrar, to perform his part of the contract.

The present suit for specific performance was filed on 26.5.1992. Such suit was resisted by the defendant, on the ground that he is not the exclusive owner of the property in dispute and also he is not in possession of the same. However, it was admitted that he was one of the co-owners to the extent of 7/45th share in the property in dispute. However, the execution of the agreement with the plaintiff was admitted. It was pointed out that the agreement was with the clear understanding that the defendant would prevail over the other co-owners of the property in dispute to sell the shop in question.

The learned trial Court found that the defendant has not produced his brothers or sisters as alleged by him to be the co-owners, as witnesses. Therefore, the plea that he is one of the co-sharers is not proved. It was held that even if the defendant is co-owner of the property in dispute, even then the plaintiff will step into the shoes of the defendant as co-sharer on the basis of purchase. In view of the said fact, the decree for specific performance was granted. Before the learned first Appellate Court, the argument raised was to the effect that unless and until the other co-owners of the property also agree to execute the sale deed of their share in favour of the plaintiff, the valid title cannot pass in favour of the plaintiff. Therefore, the decree for specific performance could not be passed by the learned trial Court and at the most a decree for refund of the earnest money could have been granted. The learned first Appellate Court, found that none of the brothers and sisters of the appellant have appeared in the witness box to depose that the said shop was earlier owned by Dr. Asa Nand, father of the appellant and after his death, the same was inherited by all the Class-I heirs of Dr. Asa Nand and, thus, dismissed the appeal.

Learned counsel for the appellant has raised two arguments in the present second appeal. Firstly, that the appellant is not the exclusive owner and, therefore, the decree for specific performance could not have been granted against the appellant in respect of the property in dispute. However, a perusal of the agreement dated 23.4.1991, does not show any recital to the effect that the property was owned by anybody else other than the defendant-appellant or that it was even earlier owned by father of the appellant. Therefore, the argument that Dr. Asa Nand was earlier the owner and after his death, property is inherited by all his legal heirs, is not tenable. It is admitted by the learned counsel for the appellant that Asa Nand, father of the appellant, died on 1.1.1978. The agreement of sale of the shop was entered into 13 years later on 23.4.1991. Till today, none of the legal heirs of Dr. Asa Nand has lodged any claim in respect of shop in dispute. Since the appellant has represented in the agreement to be the sole owner of the shop, therefore, the appellant cannot be permitted to dispute the representation made by him. The agreement is binding on the appellant, which is in respect of sale of a shop and, therefore, the decree for specific performance, cannot be permitted to be avoided by the appellant, for the reason that he is not the exclusive owner. There is no proof on record that other than the appellant, anybody else is also owner of the shop. In any case, the defendant cannot be permitted to dispute his ownership represented in the agreement.

The other argument raised is that the suit has been filed after gross delay, though within the period of limitation and, therefore, decree for specific performance, cannot be granted. Factually, it may be recapitulated that in terms of the agreement of sale dated 23.4.1991, the sale

deed was to be executed on or before 10.6.1991. The suit for specific performance has been filed within one year of the last date of execution of the sale deed i.e. on 26.5.1992. Therefore, it cannot be said that the suit has been filed towards the fag end of the limitation period, which is three years from the date fixed for the execution of the sale deed.

Learned counsel counsel for the appellant has relied upon **K.S. Vidyanadam & Others v. Vairavan, AIR 1997 SC 1751,** to contend that where the plaintiff sits quietly for two and a half years, it will be inequitable to give the relief of specific performance.

Having heard the learned counsel for the parties, I do not find that the said judgment provides any help to the argument raised by the learned counsel for the appellant. Apart from the fact that the suit has been filed within one year of the date fixed for execution of the sale deed, the fact remains that none of the circumstances, which weighed with the Supreme Court in **K.S. Vidyanadam's case (supra)**, are applicable in the present case. There is no evidence of increase in price. 1/3rd of the total sale consideration was paid to the defendant. The Supreme Court in the aforesaid case, has reiterated the principle laid down by the Constitution Bench in **Smt. Chand Rani v. Smt. Kamal Rani, AIR 1993 Supreme Court 1742**, which is to the effect that the time is not the essence of the contract and the plaintiff must perform his part of the contract within a reasonable time. The reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which

may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

26-07-2007 (HEMANT GUPTA)
ds JUDGE